

REMARKS

This Application has been carefully reviewed in light of the Final Action mailed June 23, 2006. Applicant respectfully requests reconsideration and favorable action in this Application.

Claims 1-6, 9-18, 20, 21, and 26-30 stand rejected under 35 U.S.C. §102(b) as being anticipated by Fitzgerald. Independent Claims 1, 11, 16, 21, and 25 recite in general an ability to determine pauses in encoded information of a packet flow and adjust fragmentation of packets in the packet flow in response to the encoded information including a pause. By contrast, the Fitzgerald patent makes no mention of any pauses included within encoded information carried in a packet flow let alone an ability to detect a pause in the encoded information and adjust fragmentation of packets in the packet flow in response to the encoded information including a pause as required by the claimed invention. The Examiner merely equates a pause to network congestion by saying that the packet flow is paused in the Fitzgerald patent when the network experiences congestion. The Examiner's reasoning is misplaced in that the Fitzgerald patent never states that a packet flow is paused at any point in time. Moreover, the Examiner has not cite any language in the Fitzgerald patent where encoded information includes a pause as provided in the claimed invention. The Fitzgerald patent clearly determines network congestion from the amount of time it takes the audio packets to travel between its transmitting gateway 20 and its receiving gateway 28. (See col. 3, lines 54-56, of the Fitzgerald patent). Thus, there is no relationship between network congestion of the Fitzgerald patent and the pause included in encoded information of the claimed invention. As pointed out by the Examiner, the Fitzgerald patent discloses

an ability to vary the number of audio frames packed in each packet payload depending on network congestion conditions. The higher the congestion, or the longer it takes for an audio packet to travel between gateways, the bigger the audio payload in the packet. The packetizer 24 of the Fitzgerald patent merely packetizes encoded data according to a payload size determined by network congestion, an indicator external to the encoded data. The packetizer operation described at col. 4, line 53, to col. 5, line 12, of the Fitzgerald patent does not determine if the encoded data includes a pause nor is there any adjustment performed based on any information in the encoded data. Accordingly, the Fitzgerald patent is not capable of adjusting fragmentation of packets in accordance with a pause being included in the encoded data. As a result, the Fitzgerald patent does not use any information from within its encoded data to adjust its packet size let alone using a pause included in encoded information as provided in the claimed invention. Therefore, Applicant respectfully submits that Claims 1-6, 9-18, and 20-30 are clearly not anticipated by the Fitzgerald patent.

Claims 22-25 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Fitzgerald in view of Hluchyj, et al. Independent Claim 21, from which Claims 22-25 depend, has been shown above to be patentably distinct from the Fitzgerald patent. Moreover, the Hluchyj, et al. patent does not include any additional disclosure combinable with the Fitzgerald patent that would be material to patentability of these claims. Therefore, Applicant respectfully submits that Claims 22-25 are patentably distinct from the proposed Fitzgerald - Hluchyj, et al. combination.

Applicant notes with appreciation the allowance of Claims 7, 8, and 19.

This Response to Examiner's Action is necessary to address the Examiner's characterization of the cited art in relation to the language of the claims in order to identify the flaws in the analysis supporting the rejection of the claims. This Response to Examiner's Final Action could not have been presented as the Examiner has only now provided the current characterization of the cited art.

CONCLUSION

Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicant respectfully requests full allowance of all pending claims.


If the Examiner feels that a telephonic conference is needed to clear up matters addressed herein, the undersigned attorney stands ready to discuss this Application at the convenience of the Examiner.

The Commissioner is hereby authorized to charge any other fees or credit any overpayments associated with this Application to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

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